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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kathleen G. Shazes, PETITIONER

VS.

Michael J. Shazes, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Kathleen G. Shazes
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59 pp

QUESTIONS PRESENTED FOR REVIEW.

1. Did the State of Pennsylvania deny constitutional rights of due process, right of liberty, right of privacy and right to protect reputation, and, further, did the State of Pennsylvania issue Orders that conflicted with United States Supreme Court decisions when it continually ordered mental evaluations of children and Petitioner over a six-year period, ordered children and Petitioner to participate in involuntary outpatient therapy in a mental institution and subsequently held a hearing on involuntary commitment to a mental institution without "clear and present danger" evidence and without providing independent counsel for the children; denied Petitioner and children in-court presentation of evidence and right to confront witnesses; and failed to safeguard psychological evaluations which "blackened" the reputation of Petitioner and children and interfered with employment rights.

2. Did the State of Pennsylvania deny federal employment rights and rights under ERISA legislation when it allowed Respondent's employer (who was also the administrator of the pension fund) to enter the case, write a derogatory memo about Petitioner, and use company resources and influence to directly hire, oversee, and pay experts for psychological evaluations which destroyed Petitioner's credibility and caused Petitioner to lose most of her assets and economic claims.

3. Are Pennsylvania statutes 23 Pa. C.S.A. § 3901 and 23 Pa.C.S.A. § 5305 so vague that they infringe upon constitutional rights and therefore are void under the void for vagueness doctrine.

4. Did the State of Pennsylvania deny constitutional right of equality and rule in contradiction to the decisions of other state supreme courts when it upheld the 1995 Pennsylvania decision that divorced parents are not responsible for college education costs of children over the age of eighteen when USCA 20 § 1087oo requires the divorced custodial parent to contribute a percentage of wages and assets each year towards children's college expenses.

LIST OF PARTIES

Kathleen G. Shazes, Petitioner
Michael J. Shazes, Defendant
Jenny C. Shazes
Michael Palmer Shazes

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania appears at Appendix A to the petition and is unpublished.

The opinion of the Pennsylvania Trial Court appears at Appendix B to the petition and is unpublished.

The decision of the Supreme Court of Pennsylvania denying review and rehearing appears at Appendix C and D and is unpublished.

JURISDICTION

The date on which the Supreme Court of Pennsylvania denied review of this case was September 21, 1998. A copy of the order denying review appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: November 19, 1998, and a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL/STATUTORY PROVISIONS INVOLVED

United States Constitution (USCA 41)
Amendments:

Article XIV § 1: All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Pennsylvania (Purdon 7)

Article I § 1: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

23 Pa. C.S.A. § 3901 (Purdon 78-9)

a) Establishment. - a court may establish a mediation program for actions brought under this part of chapter 53 (relating to custody).
(c) local rules.-
(1) The court shall adopt local rules for the administration of the mediation program to include rules regarding qualifications of mediators, confidentiality, and any other matter deemed appropriate by the court.
(2) The court shall not order an orientation session or mediation in a case where either party or child of either party is or has been the subject of domestic violence or child abuse at any time during the pendency of an action under this part or within 24 months preceding the filing of any action under this part.

23 Pa. C.S.A. § 5305 (Purdon 503)

(a) General Rule.- the court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include, but shall not be limited to,

discussions of the responsibilities and decision making arrangements involved in both sole and shared custody and the suitability of each arrangement to the capabilities of each parent or both parents.

(c) Report. - The court may require the counselor to submit a report if the court desires and within such reasonable time as the court determines.

50 Pa. C.S.A. § 7111 (Purdon Sup 70)

(a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

(1) those engaged in providing treatment for the person;

(2) the county administrator, pursuant to section 110;

(3) a court in the course of legal proceedings authorized by this act; and

(4) pursuant to Federal rules, statutes, and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.

50 Pa. C.S.A. § 4605 (Purdon 237-238):

The following acts are hereby declare to be crimes and any person found guilty thereof shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars ($1000), or to undergo imprisonment not exceeding one year, or both, except that if such acts shall be committed by a corporation, partnership or association, the officers and directors of such corporation or the members of such partnership or association, its agents and employees who knowingly participated in such acts shall also be guilty of a misdemeanor and upon conviction thereof, shall be punished as herein before provided:

(3) It shall be unlawful for any person, corporation, partnership or association to willfully cause or conspire with or assist another to cause the unwarranted detention or commitment of any person under the provisions of this act, or the denial to any person of any of the rights accorded to him under the provisions of this act.

(5) It shall be unlawful for any person to disclose without authority the contents of any records or reports touching upon any matter concerning a person who has been admitted, committed or detained pursuant to the provisions of this act.

(6) If shall be unlawful for any physician to knowingly make any false statement, certificate or report which aids in or causes a person to be admitted, committed or detained pursuant to the provisions of this act.

50 PS § 7304 (Purdon 94-7)

(e) Hearing of Petition for Court-ordered Involuntary Treatment - A hearing on a petition for court-ordered involuntary treatment shall be conducted according to the following:

(1) The person shall have the right to counsel and to the assistance of an expert in mental health.

(2) The person shall not be called as a witness without consent.

(3) The person shall have the right to confront and cross-examine all witnesses and to present evidence in his own behalf.

(4) The hearing shall be public unless it is requested to be private by the person or his counsel.

(5) A stenographic or other sufficient record shall be made, which shall be impounded by the court and may be obtained or examined only upon the request of the person or his counsel or by order of the court on good cause shown.

(6) A decision shall be rendered within 48 hours after the close of evidence.

23 Pa. C.S.A. § 5305 (Purdon 156)

(a) General Rule.-

(1) In making an order for custody or partial custody, the court shall consider the preference of the child as well as any other factor which legitimately impacts the child's physical, intellectual and emotional well-being.

(3) The court shall consider each parent and adult household member's present and past violent or abusive conduct which may include, but is not limited to, abusive conduct as defined under the act of October 7, 1976 (P.L. 1090, No. 218) known as the Protection from Abuse Act.

23 Pa. C.S.A. § 6108 (Purdon 580-582)

The court may grant any protection order or approve any consent agreement to bring about the cessation of abuse of the plaintiff or minor children. The order or agreement may include:

(8) Directing the defendant to pay the plaintiff for reasonable

losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees.

20 U.S.C. § 1087oo. Family contribution for dependent students

(f) Computations in case of separation, divorce, remarriage, or death
(1) Divorced or separated parents
Parental income for a student whose parents are divorced or separated is determined under the following procedures:
(A) Include only the income and assets of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

29 U.S.C. § 1001 (ERISA) (USCA 152)

Section 1052(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph -

(i) the term "qualified domestic relations order" means a domestic relations order -

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgement, decree, or order (including approval of a property settlement) which -

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law)

STATEMENT OF THE CASE

This case began as an action in custody and divorce which was filed in November 1992. It quickly became, however, a case centered on Respondent's attempts to involuntarily commit Petitioner and both children born of this marriage to a mental institution. Respondent was employed by DuPont, and because Respondent personally knew several DuPont executives, Respondent was able to enlist DuPont's influence and financial resources to actively manage and control the case. Therefore unique constitutional and federal questions have been brought into custody and divorce litigation.

Almost immediately after the parties separated in September 1992, Respondent enlisted the help of DuPont in this case. Although the trial judge refused to allow any testimony on Respondent's lifestyle or the extent and nature of Respondent's associations with DuPont executives, the record is clear that Respondent had problems throughout his marriage, took nude showers with his son and insisted on bathing the son even though the son was ten years of age, had surgery for a hematoma (external hernia) of the rectal area several months before separation, and had expressed concern to Petitioner that he might have contracted AIDS from a male co-worker at DuPont. Even though DuPont was Petitioner's former employer and was also the administrator of the pension fund of which Petitioner was beneficiary, DuPont, based entirely on Respondent's representations, issued an October 1992 memo which contained derogatory remarks about Petitioner's mental health and encouraged Respondent to get Petitioner "out of her comfort zone and expose her at 'any cost'" (Appendix E-1). After DuPont became aware that Petitioner was in possession of the October 1992 memo, DuPont actively entered the case, selecting, managing, and paying mental health professionals and mediators for reports that ruined the credibility of Petitioner and children and recommended involuntary commitment of Petitioner and both children to a mental institution.

Respondent spent five years continually requesting psychological evaluations which the trial court continuously granted. 1) Howard Blandau, pursuant to the January 26, 1993 Order, examined Petitioner and children and found them to be normal. 2)Mr. Stecher, appointed by the court as mediator in Spring 1993, issued a May 1993 report in which he found, based on unsubstantiated allegations by DuPont managers and DuPont hired experts, that Respondent was alienated from the children and concluded the children had been negatively influenced by Petitioner. Mr. Stecher's report was subsequently used as a reference by almost all other mental health experts in this case and unsubstantiated hearsay evidence was therefore copied into many reports. Additionally, based on Mr. Stecher's report, the court, without a hearing and without Petitioner's

agreement, change the custody agreement that had specified supervised visitation for Respondent and instead ordered the children to visit Respondent at his residence for five weeks during the summer of 1993. During that period of partial custody, Respondent locked the children in a Center City Philadelphia house and had teams of two and three mental health professionals, hired and paid for by DuPont, make house calls two to three times a week to examine the children in the Philadelphia house. 3) When the children would not agree to live with Respondent, Dr. Koch, Patricia Dice, and Dr. Saints - all hired and managed by DuPont - concluded the children, even though not a danger to themselves or others, needed to be involuntarily committed to a mental institution in order to force them to be reconciled with Respondent. During the visitation with Respondent, Respondent seriously injured the son's leg and ankle which injury was treated with an air splint and crutches at the emergency room of the local hospital. The court subsequently granted the children a Protection from Abuse against Respondent. 4) The state agency, Children and Youth, then hired Dr. Overcash to do a psychological evaluation of the children. Dr. Overcash found the children to be normal. 5) Additionally, DuPont hired Dr. Bjornson to review the records and complete an evaluation for DuPont. Dr. Bjornson, who never saw or examined either Petitioner or children concluded the Petitioner was 'a very sick lady' and the children suffered from 'craziness of two'.

In March 1994, the court granted Respondent's emergency motion for additional mental evaluations and appointed another mediator, Dr. Nutter. 6) Dr. Nutter recommended the children be forced to see a psychiatrist with Respondent. In December 1994, without a hearing and without providing any independent counsel for the children, the court ordered Petitioner and both children to attend out-patient therapy at the Philadelphia Child Guidance Center which is a mental hospital for disturbed children (Appendix E-4). There was no 'clear and present danger' evidence presented and the outpatient therapy was ordered solely because the children did not wish to maintain a relationship with Respondent. 7) Dr. Scoles, whom the court appointed as evaluator at the Philadelphia Child Guidance Center, concluded after one visit that the children's relationship with Respondent was so strained that outpatient therapy would not be successful and Dr. Scoles actually recommended Petitioner and both children be involuntarily committed to a mental institution for a long duration of time (months and perhaps years) until the children agreed to have a relationship with Respondent.

The court held a hearing on involuntary commitment on October 12, 1995. Even though the judge had signed Petitioner's Motion in Limine that barred reports from being entered without live testimony and even though the judge had stated he would call court-appointed mediators, Mr. Stecher

and Dr. Nutter, to the hearing to testify concerning their reports, no expert witnesses or disinterested witnesses attended the hearing (Appendix E-5). The court simply accepted into evidence the reports of the experts and/or depositions of experts, some of which were taken without anyone present to represent Petitioner and/or children. Furthermore, some of the reports and depositions clearly stated that DuPont had hired, managed, and paid for many of the experts and their reports (Appendix E-2,3). The court subsequently ordered the son in April 1996 to again attend therapy sessions with a psychologist and Respondent and further provided that the Order could be modified based on recommendations of the psychologist without a hearing. The son's testimony was never transcribed by the Court nor the reasons for his wishes stated in the Opinion of Court. The son, at the time of the April 1996 Order, was fifteen and a half years of age and a straight 'A' student.

In the divorce action, the case again revolved around the mental health issues presented by Respondent. The reports of Mr. Stecher and Dr. Nutter were entered without any in-court presentation of evidence or opportunity to confront the witnesses. The court also permitted, over the objections of Petitioner, testimony from Dr. Saints, another expert hired, managed and paid for by DuPont and whom had never examined or seen Petitioner. Petitioner lost most of her share of marital assets and economic claims based on the court's conclusion that Petitioner was not credible based on expert reports. Additionally, Petitioner was denied her request for a QDRO of the DuPont pension funds of which she was beneficiary and further, the trial court directed Respondent to borrow money from his pension funds when ERISA prohibits state courts from affecting pension funds except through a QDRO. The trial court also refused to order Respondent to contribute to the children's college expenses.

Petitioner and Respondent appealed the trial court decision to the SuperiorCourt of Pennsylvania. Questions raised by Petitioner included the continual court-ordered psychological evaluations of Petitioner and children over a five-year period; the ordering of outpatient therapy without 'clear and present danger' evidence; the failure of the court to safeguard the psychological evaluations of Petitioner and children and the failure of the court to prevent Respondent from widely circulating those psychological evaluations to friends, neighbors, and business associates; the influence and management of DuPont over the case when DuPont was the administrator of the pension fund; the court's withdrawal of Petitioner's attorney for money matters in the middle of a trial not yet decided, forcing Petitioner to proceed pro se and without her file; the denial of Petitioner's request for a QDRO of the pension; the loss of assets and economic claims based on the court's perceived lack of credibility of Petitioner when expert reports

had been entered without in-court presentation of evidence; the failure of the court to require Respondent to contribute to the children's college expenses. (Contained in Questions 1, 2, 3, 5, 7, 9, 11).

The Superior Court did not directly answer most of the questions but merely upheld the lower court decision. The Superior Court did note issues of agreement of the parties, including a QDRO of the pension, and stated the parties could proceed on their own to modify the Order based upon their agreements. On the issue of constitutional right of due process, the Superior Court opined that due process did not require in-court presentation of evidence, that the depositions were acceptable (even though no one was present to represent Petitioner and/or children for some of the depositions), and that Petitioner was responsible to depose experts if she did not agree with their reports.

The Supreme Court denied review of the issues presented, including the constitutional issues and review of the statutes 23 Pa. C.S.A. §3901 and § 5305, and further, let stand the 1995 decision that divorced parents are not responsible for children's college expenses. The court also denied a request for a reconsideration.

This Petition asks that Supreme Court of the United States to decide whether constitutional rights of due process, liberty, privacy, protection of reputation, and equal protection under the law apply to all citizens in all circumstances or if custody and divorce litigation permits States to deprive parties of their fundamental constitutional rights; whether Pennsylvania statutes 23 Pa. C.S.A. §3901 and 23 Pa. C.S.A. Section 5305 are so vague that they infringe upon constitutional rights; and whether Pennsylvania rulings conflict with provisions in federal legislation known as ERISA and with USCA 20 § 1987oo.

REASONS FOR GRANTING THE PETITION

(A) Questions of constitutional rights:

The Mental Health Act of Pennsylvania, 50 PS § 7103 specifically covers procedures for involuntary outpatient treatment for any mental health establishment that provides for diagnosis, treatment, care, or rehabilitation. Further, 50 PS § 7103 states that hearings for court-order involuntary treatment shall include provisions for the right to have counsel and assistance of an expert in mental health, the right to confront and cross-examine all witnesses, and the requirement that a record be made and impounded by the court and released only upon request for good cause

In Goldy v Beal, 429 F. Supp 640 (1976), the Federal Court held that no mental health facility director "shall accept any person except upon judicial determination" that the person posed "a clear and present danger of harm to others or himself' which was established by the person inflicting or attempting to inflict serious bodily harm on himself or others within the last 30 days.

At no time in the present case were any of these standards ever applicable to Petitioner or children. Neither was any 'clear and present danger of harm' evidence ever submitted in this case. Nevertheless, the lower court ordered Petitioner and children to participate in outpatient therapy in a Philadelphia mental facility with Dr. Scoles without holding a hearing and without providing any independent counsel for the children. Further, the Order for outpatient therapy was based on expert reports that were entered without any in-court presentation of evidence or cross-examination of experts. The psychological reports were filled with hearsay and disputed facts.

After the lower court received the outpatient report from Dr. Scoles, the court held a hearing in October 1995 to consider involuntary inpatient commitment of Petitioner and children. Again, no 'clear and present danger of harm' evidence was ever submitted, no expert witnesses attended the hearing and all reports of experts were accepted into evidence without any in-court presentation of evidence or cross-examination. The children were not provided independent counsel, and, further, Petitioner was placed at great disadvantage when the lower court, at the end of September 1995 and less than three weeks before the commitment hearing, permitted Petitioner's counsel to withdraw from the case because Petitioner lacked sufficient funds to pay on-going legal fees. The court further denied Petitioner counsel fees and failed to order Petitioner's counsel to hand over the file. Petitioner was able to secure new counsel for a small fee to attend the hearing only but the new counsel did not have the case file and had little time to prepare.

The Pennsylvania Superior Court, in reviewing this case, stated that the "procedural errors identified by the wife are insufficient to justify prolonging this litigation." The Court stated that although "no expert testified at the custody hearing....It appears, however, that the parties agreed to handle the expert testimony entirely through depositions." (Appendix A-7).

An examination of the record, however, does not show that the parties agreed to handle the expert testimony through depositions. The lower court judge addressed Petitioner's objections to the reports and stated on the record before the commitment hearing that "if you're going to object to the admissibility of both reports.. let me know in a motion in limine and we will either direct that the doctors be here so that they can be cross-examined and we will not rely on the reports...."(Appendix E-5).

The record shows that Petitioner filed a Motion in Limine about December 12, 1994 objecting to the admissibility of all expert reports and requiring in-court presentation of evidence which the judge signed. The lower court then subsequently signed on September 25, 1995, Respondent's motion for depositions of experts while Petitioner was without counsel, without Petitioner's knowledge, and without giving Petitioner an opportunity to respond. When Petitioner received the signed Order granting depositions of experts, Petitioner filed a Protective Motion on October 2, 1995 objecting to the depositions and asking for in-court testimony of experts which the lower court denied. The record shows Petitioner never agreed to forgo in-court testimony; in fact, the record shows Petitioner expressly objected to the court's admitting reports without testimony and petitioned the court on several occasions to require in-court presentation of evidence.

What is of even more import, however, is that the Superior Court's statements in the present case conflict with their earlier ruling. In Gunter v Gunter, 240 Pa. Super. 382, 261 A.2d 307(1976), the Superior Court held that "the sole purpose of a custody hearing is to determine what is in the best interests of the child" and that the child "had a right to expect that the hearing judge would follow prescribed procedures. That right was not one that the hearing judge could ignore, or that either parent could waive." The Superior Court entirely overlooked the children's rights in the commitment hearing.

The United States Supreme Court in Goldberg v Kelly 397 US 254 L. Ed. 2d 287, 90 S Ct 1011 stated that "The fundamental requisite of due process of law is the right to be heard....due process requires an opportunity to confront and cross examine adverse witnesses." The Court further held that "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."

Federal courts, in deciding cases involving commitment of children, have

likewise determined children are entitled to due process and legal counsel. In Bartley v Kremens, 402 F.Supp. 1039 (1975), the court held that "A child whose liberty is in question 'needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings...'" The court further held that "As the right to counsel applies to criminal cases, so it must apply during all significant stages of the commitment process." (Also see Specht v United States, 386 US 605, 610 87 S.CT. 1209, 1212, 18 L.Ed.2d 326 (1967)).

Likewise, in Parham v. J.R., 99 S. Ct. 2493 (1979), the United States Supreme Court stated that

> ... our cases have made clear that commitment to a mental hospital "is a deprivation of liberty which the State cannot accomplish without due process of law."...At such hearings they must be accorded the right to "be present with counsel, have an opportunity to be heard, be confronted with witnesses against [them], have the right to cross-examine, and to offer evidence of [their] own... Minors as well as adults are protected by the Constitution and possess constitutional rights...

In the present case, the lower court, ordered psychological evaluations of Petitioner and children and accepted those reports into evidence without in-court presentation of evidence. based on provisions in 23 Pa. C.S.A. § 3901 and § 5305 which state:

> a) Establishment. - a court may establish a mediation program for actions brought under this part or chapter 53 (relating to custody).
> (c) local rules. -
> (1) The court shall adopt local rules for the administration of the mediation program to include rules regarding qualifications of mediators, confidentiality, and any other matter deemed appropriate by the court.

> (a) General Rule. - the court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include, but shall not be limited to, discussions of the responsibilities and decision making arrangements involved in both sole and shared custody and the suitability of each arrangement to the capabilities of each parent or both parents.
> (c) Report. - The court may require the counselor to submit a report if the court desires and within such reasonable time as the court

determines.

Both of these statues are vague and, because they are vague, potentially infringe upon the constitutional rights of the parties. First of all, these statues do not give fair warning that counseling or mediation may involve psychological evaluations and may result in court-ordered involuntary outpatient treatment or inpatient commitment. The statutes do not provide for counsel or other representation and do not require participation be on a voluntary basis. Furthermore, the statutes allow the courts to require the counselor to submit a report to the court without requiring in-court presentation of evidence, without providing that release of psychological reports (which are medical records) require the written permission of the patient, and without providing standards for safeguarding of the reports. The statutes also do not provide for protection from arbitrary decisions of the court. Neither is there any prohibition in these statutes from ordering children to undergo counseling or psychological evaluations.

Secondly, these statutes are impermissibly overbroad because they permit, as demonstrated in this case, the commitment of individuals for the purposes of reconciliation of a child to a parent which the State has no legitimate interest in incarcerating. Neither do these statutes infer that mediation or counseling sessions are necessary or required for the purposes of the State.

The void for vagueness doctrine as stated in Goldy v Beal, 429 F.Supp. 640 (1976) (pp. 647-648).

> requires statutes to be drawn with sufficient definiteness and specificity to provide fair warning of the conduct proscribed by law and to restrict the discretion of the governmental authorities or courts in enforcing the law...It always operates when a statute's vagueness creates the possibility that it can be applied in an arbitrary manner that infringes on such fundamental interests as First Amendment rights of speech and assembly, or the right of liberty.

The present case has proven these statutes, 23 Pa.C.S.A. § 3901 and § 5305 are too vague and did infringe upon fundamental constitutional rights. These statutes should be ruled void for vagueness.

In review of the present case, the Superior Court also did not address the issue of protection of reputation. Consider the serious and derogatory remarks made by the psychologists about children and Petitioner:

Dr. Bjornson:

..it's pretty apparent that [Petitioner] has some type of significant

psychological disorder. I have not seen her, so I cannot say clearly what that disorder is...Kathleen has had a long-term mental illness with the prime symptom being paranoia in various forms....She's had all sorts of other very bizarre paranoid delusions...She is apparently a mentally ill woman....Kathleen is a pretty, as I said, dangerous, destructive lady. Again, on the basis of everything I have read – I have not seen her, so I can't base this on that....These kids have been brainwashed by a psychotic paranoid woman....They may indeed need to be hospitalized, but the kids are now almost as psychotic as Mom...

Dr. Koch :

...I concluded that [the children] are suffering with a shared paranoid disorder formally called folie a deux. It's a form of psychotic behavior or behavior which in today's every day language might be referred to as a form of brainwashing....Since Jenny is 15 years of age, soon to turn 16, it is imperative that psychiatric help be extended to Jenny in a comprehensive manner....A diagnostic hospitalization is likely to be the most effective treatment of choice...She is not a clear and present danger to herself and others, despite the severity of her current psychiatric dysfunction, but she clearly will require intensive treatment.. Michael will also require extensive psychiatric treatment for the same reasons as Jenny. At the age of 11, he is still young enough that his father could place him in a hospital without needing a court order.

These depositions and reports as well as those of Mr. Stecher, Dr. Nutter, and Dr. Scoles, and also the DuPont memo of October 1992 (Appendix E-1), all stated professional opinions that range from serious to horrendous allegations concerning Petitioner and children. Those reports, which also included recommendations for involuntary commitment, damaged the reputation and placed a stigma on both Petitioner and children. This damage was magnified due to the failure of the court to safeguard those reports and to prevent Respondent from widely circulating psychological reports and depositions.

The U.S. Supreme Court stated in Parham that:

Even under the best of circumstances psychiatric diagnosis and therapy decisions are fraught with uncertainties...These uncertainties are aggravated when, as under the Georgia practice, the psychiatrist interviews the child during a period of abnormal stress in connection with the commitment, and without adequate time or opportunity to become acquainted with the patient.

The Supreme Court also stated in Parham v J.R., 442 U.S. 584 (1978):

> We also recognize that commitment sometimes produces adverse social consequences for the child because of the reaction of some to the discovery that the child has received psychiatric care...For purposes of this decision, we assume that a child has a protectible interest not only in being free of unnecessary bodily restraints but also in not being labeled erroneously by some persons because of an improper decision by the state hospital superintendent....Moreover, childhood is a particularly vulnerable time of life and children erroneously institutionalized during their formative years may bear the scars for the rest of their lives.

Additionally, in J.L. v Parham, 412 R. Supp 112 (1976), the federal court held that the "Fourteenth Amendment applied to prohibit the use of the coerced confession. Mr. Justice Douglas said, 'Neither man or child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.'"

Not only did the court fail to safeguard the psychological reports, but many of these unexamined remarks and hearsay were copied by the lower court into the April 16, 1997 Opinion, thereby taking on the character of having been found true by a court of law. These remarks have the potential to ruin the future of Petitioner and children, especially since Respondent has widely circulated the DuPont memo, psychological reports, and Opinion to friends, neighbors, church members, doctors, business associates, and schools, destroying the reputation and employment prospects of Petitioner and perhaps also of the children. Additionally, subjecting children to continuous psychological evaluations and therapy over a five year period definitely deprived them of "the freedom of an ordinary, every-day child in these United States."

Additionally, there are questions of privacy. The United States Supreme Court in United States v Westinghouse Elec. Corp., 638 F.2d 570 (1980) held that the constitutional protection of privacy extends to two types of privacy interest which include the individual interest in avoiding disclosure of personal matters, including the right not to have an individual's private affairs made public by the government. Factors taken into consideration included the type of record requested, the potential for harm in subsequent nonconsensual disclosure, the injury from disclosure to the relationship in which the record was generated, and the adequacy of safeguards to prevent unauthorized disclosure.

Considering the vast differences in the psychological opinions in this case - where Drs. Overcash, Blandau, and Cooke found Petitioner and children to be normal while Drs. Nutter, Stecher, Koch, Bjornson, and Scoles found

Petitioner and children not only to be not normal but psychotic and in need of involuntary outpatient or inpatient commitment to a mental institution - it does not follow that psychological evaluations furthered the interest of the State because of the uncertainties of the reports and the diametrically opposed recommendations.

Of additional consideration is the role Respondent's employer, DuPont, played in this case. DuPont had no legitimate reason for intrusion into the privacy of Petitioner and children. Furthermore, after having written the October 1992 memo containing derogatory remarks about Petitioner, DuPont was an interested party and should not have been permitted to enter or influence this case. Additionally, DuPont was the administrator of the pension fund of which Petitioner was beneficiary. and had a duty to protect beneficiary's rights to the federal pension. The Pennsylvania Supreme Court referred to ERISA (29 U.S.C. § 1001) in Berrington v Berrington, 534 Pa. 393, 633 A.2d 589 (1993) which

> requires as a condition of plan qualification, the inclusion of a spendthrift provision which prevents the assignment of alienation of pension benefits. This has sometimes presented a conflict for the plan administrator, whose duty extends not only to the plan and the plan participant, but also to the beneficiaries.

Nevertheless, in spite of all these problems which should have prohibited DuPont from any role in this case, the lower court accepted into evidence reports of experts DuPont had hired and managed without permitting in-court presentation of evidence or cross-examination. These reports ruined the reputation of Petitioner and children and also cause Petitioner to lose assets and almost all economic claims, including the courts denial of a QDRO of the federal pension of which Petitioner was beneficiary.

DuPont paid Drs. Nutter, Stecher, Koch, Bjornson, and Scoles to evaluate and write reports concerning Petitioner and children. Considering all these reports contained derogatory comments concerning Petitioner and children while the other three experts -Drs. Overcash, Blandau, and Cooke - who were not paid by DuPont found Petitioner and children to be normal, it is hard to dispute the fact that DuPont was not only permitted to invade the privacy of Petitioner and children, but that DuPont was also able to exert influence on the reports of those experts under DuPont management. In the July 30, 1993 report of Dr. Koch, he specifically states that Dr. Koch, Dr. Saints, and Patricia Dice were retained by DuPont and their involvement in the case authorized by Walter Beame, Ed.D., Regional Manager of DuPont EAP and Susan Schoenberg, M.S.W., DuPont EAP Consultant. Additionally, consider Dr. Bjornson's remarks in his November 1993

deposition concerning his involvement in this case:

> This was basically a request of DuPont's EAP...In this particular case I was not consulted either as a partial person, as the defendant's or plaintiff's representative. I was basically asked to do an independent evaluation for DuPont. DuPont is going to pay me, whatever I do.

O'Donnell v U.S. 891 F.2d 1079 (3rd.Dir. 1989) states that "we conclude that an actor commits an intentional intrusion only if he believes, or is substantially certain, that he lacks the necessary legal or personal permission to commit the intrusive act."

Not only did the Pennsylvania lower court never order Dr. Koch, Ms. Dice, Dr. Saints, or Dr. Bjornson to conduct an evaluation, but DuPont did not have any legitimate right to subject the children to an involuntary evaluation by any of these professionals. DuPont's intrusion into the privacy of Petitioner and children was not personally permitted nor legally permitted. The lower court, however, not only did not protect Petitioner's and children's right to privacy, the lower court rewarded DuPont's intrusion into their privacy by not only accepting the depositions and reports of Drs. Koch and Dr. Bjornson into evidence without in-court presentation of evidence, but also relying on their reports and depositions to form a Court Opinion which included finding Petitioner and children not credible.

b) Equality under the law: College education

In the current case, the Pennsylvania Supreme Court declined to review the issue of higher education contributions of divorced parents, leaving stand the 1995 ruling in Curtis v Kline which is in conflict with New Hampshire's Supreme Court which upheld the duty of divorced parents to contribute to the college education of their children. In LeClair v LeClair, 623 A.2d 1350 (N.H. 1993) New Hampshire stated:

> ....we find the State has the dual legitimate interests of promoting higher education for its citizens, and of extending protections to children of divorce to ensure that they are not deprived of opportunities they otherwise would have received had their parents not divorced. (p. 1357)

However, Pennsylvania stated in Curtis v Kline, 542 Pa. 249, 666 A.2d 253 (1995):

> With all respect to our sister state, we must reject the New Hampshire

> Court's analysis in LeClair. The discriminatory classification adopted by our legislature is not focused on the parents but rather on the children. The question is whether similarly situated young adults, i.e. those in need of financial assistance, may be treated differently. Ultimately, we can conceive of no rational reason why those similarly situated with respect to needing funds for college education, should be treated unequally.

Pennsylvania, however, in adopting their position - that divorced parents are not required to contribute to their children's college expenses - failed to take into account federal law. U.S.C.A. 20 § 1087oo states:

> Family contribution for dependent students
> (f) Computations in case of separation, divorce, remarriage, or death
> (1) Divorced or separated parents
> Parental income for a student whose parents are divorced or separated is determined under the following procedures:
> (A) Include only the income and assets of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

Federal law requires that, in cases of divorce or separation, the custodial parent be required to contribute a percentage of wages and assets towards the college education of the student. Pennsylvania's ruling conflicts with federal law because there is nothing in the federal law that permits States to declare an unmarried child under the age of 25 to be an economic orphan.

Furthermore, there is a question of equality under the law. If Pennsylvania decrees that divorced parents are not required to contribute to their children's college expenses, but federal and Pennsylvania state law (PHEAA) requires the custodial parent to contribute to the college education of the children, one parent is walking away with no financial responsibility while the other parent is required by law to expend assets and wages towards college expenses. This is an inequality under the law and is a violation of constitutional rights. Or, conversely, if the Pennsylvania 1995 ruling is upheld, Pennsylvania students from divorced homes can be declared independent students for federal aid purposes since the State has declared them to be economic orphans. However, New Hampshire students from divorce homes can not make that same declaration and therefore there is again inequality under the law.

The Supreme Court of the United States has jurisdiction under the Constitution to review judgments of state courts when a party in state court claims that the party has been denied a right or immunity under the laws of the United States (28 USCS § 1257). Although the issues in this case are contained in custody and divorce litigation, the writ does not involve "core" domestic relations questions. Petitioner is not asking the court to decide or review custody; to decide or review issues concerning the divorce decree; or to make a determination regarding division of assets. Petitioner is asking the court to review the infringement of the State on the right to liberty as presented in the issues of involuntary outpatient therapy and inpatient commitment; the right to protection of reputation and privacy as regards medical records and psychological evaluations and third party intrusion; the right to due process as regards in-court presentation of evidence, cross-examination of witnesses, and independent counsel for children in circumstances involving psychological evaluations of the children; and the right of equality under the law as regards contributions to children's college expenses for separated and divorced parents. The question of contributions to the college expenses of children is very important since is it necessary to settle the conflicts among the states in their rulings on this matter and the conflicts between the Pennsylvania ruling and the requirements of federal law. Additionally, Petitioner is asking the court to decide whether 23 Pa. C.S.A. § 3901 and § 5305 are void because they potentially infringe upon constitutional rights because they are too vague.

Rule 10 of the Supreme Court Rules indicates the character of the reasons the Court considers for review on a writ of certiorari:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort of a United States court of appeals;
> (c) a state court .... has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

As set forth above in this Petition, Pennsylvania has answered important federal questions involving constitutional rights in a way that conflicts with United States Supreme Court decisions, other federal appeals court decisions, other state court decisions, and with established federal law. These federal questions have not, but should be, settled by this Court.

These questions are important to be heard and decided, not just to the parties involved in this case, but to a majority of the United States citizens.

Tragically, over 50% of all marriages in the United States now end in divorce. Because state courts have failed to uphold constitutional rights in these types of litigation, parties and their children are sometime subjected to years of the most degrading and inhumane treatment. As this case has demonstrated, parties and their children can be ordered to spend years undergoing psychological evaluations and therapy; can have their reputation ruined for a lifetime; and can lose assets and economic claims based on hearsay and unsubstantiated and unexamined reports and the whim of a psychologist or mediator. This is especially tragic for the children involved. Children involved in custody actions have already lost the pleasure of living with two parents, the security of the family home, and much of their economic security. They are defenseless in a case that determines their future. It is patently unfair for states to proceed to intrude on whatever childhood remains by requiring the children to continually have psychological evaluations and therapy; to subject them involuntary outpatient therapy and force them to attend a hearing on inpatient commitment with no counsel to assist them; to have their mental health called into question because they do not wish to maintain a relationship with one of the parents; to have their reputation and potentially their future ruined by labeling them with derogatory and defamatory remarks; and to fail to safeguard their medical records. The State in this case has stripped these children of every right afforded them in the Constitution.

This writ asks the Court to decide if this treatment is defensible in a country which is to be governed by a Constitution so remarkable as the Constitution of the United States. This writ is of immense importance to be granted because the decisions in this case will ultimately affect over half the citizens in the United States.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

Kathleen G. Shazes

Date: 2/11/99

APPENDIX A

Decision of the State Court of Appeals:

KATHLEEN G. SHAZES, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL J. SHAZES, Appellee	:	No. 293 Harrisburg 1997

Appeal from the ORDER ENTERED March 14, 1997,
in the Court of Common Pleas of FRANKLIN County,
CIVIL, No. FR 1992-970.

KATHLEEN G. SHAZES, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL J. SHAZES, Appellee	:	No. 339 Harrisburg 1997

Appeal from the ORDER ENTERED March 14, 1997,
in the Court of Common Pleas of FRANKLIN County,
CIVIL, No. FR 1992-970

KATHLEEN G. SHAZES, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL J. SHAZES, Appellee	:	No. 378 Harrisburg 1997

Appeal from the ORDER ENTERED April 16, 1997,
in the Court of Common Pleas of FRANKLIN County,
CIVIL, No. FR 1992-970

BEFORE: JOHNSON, STEVENS, and OLSZEWSKI, JJ.

MEMORANDUM:

This case involves the protracted divorce of Kathleen G. Shazes (wife) and Michael J. Shazes (husband). The parties allege numerous instances of error in the equitable distribution and child custody schemes crafted by the trial court.

The parties were married on January 17, 1976. The marriage produced two children, Jenny Christina Shazes, born February 9, 1978[1] and MPS, born October 15, 1981. The parties separated on September 2, 1992. Wife filed for divorce and equitable distribution. Husband filed a complaint for partial custody of the parties' children. Hearings on various matters relating to the divorce persisted approximately four years. On April 22, 1996, the master entered a recommendation finding that the bulk of the parties' assets are wife's separate property. The master recommended that the marital property be divided 40% to wife and 60% to husband. Both parties filed exceptions. On March 17, 1997, the court adopted the master's recommendation after making minor adjustments and entered a final divorce decree.

In the custody action, the court found that husband's relationship with MPS has significantly deteriorated since the parties separated and that MPS currently desires to sever all ties with husband. Nevertheless, the court concluded that restoring the child's relationship with his father would be in the child's best interest. Accordingly, on April 16, 1997, the court granted husband partial custody on MPS. Husband's contact with MPS, however, is limited to visits supervised by a therapist until the parent-child relationship improves. These timely appeals followed.

Wife presents twelve questions for our review.

1. Did the court err when it failed to make a complete and accurate record, failed to transcribe and consider the testimony and preference of the child, and failed to protect the child's rights?
2. Did the court err and deny wife due process when it made determinations based on old reports of experts without live testimony?
3. Did the court err in awarding husband partial custody, shared legal custody and the ability to modify the Order upon recommendation of husband's psychologist?
4. Did the court err in distributing assets using "stale" values; awarding husband increase in assets, failing to consider circumstances at distribution; and awarding wife only 40% of marital assets?
5. Did the court err and deny wife due process when it denied wife alimony pendente lite and forced wife to proceed for two years without counsel and her file while husband was represented?
6. Did the court err in denying wife alimony, counsel fees, costs and expenses?
7. Did the court err in denying wife a QDRO of the pension/pension

funds with a deferred distribution of the pension, and in failing to consider damage done to wife's pension rights by husband?
8. Did the court err in denying wife rent, moving expenses, reimbursement for payment of marital debt, reimbursement for payment of and damage to assets, and relief provided by Protection from Abuse statutes?
9. Did the court err in limiting the children's property, determining previous Agreements did not exist when husband precluded wife from access to her only witness, and denying wife reimbursement of the percentage of the SIP funded by wife's inheritance money?
10. Did the court err in concluding the Order is a final settlement of support and medical reimbursement issues which were not heard by this court and are not in the jurisdiction of this court?
11. Did the court err in permitting husband to use the resources and influence of DuPont to actively manage most of the experts in this case and attack wife's mental health and credibility?
12. Did the court err in finding wife in contempt of court?

Wife's brief, 8 (trial court answer omitted).[ii]

On cross-appeal, husband presents three questions for our review.

1. [Did the trial court] commit a clear abuse of discretion in ordering an immediate offset of assets instead of directing that a QDRO of the 401(k)//SIP Plan due to the non-liquidity of the marital assets and the potential tax consequences in invading this Plan[?]
2. [Did the trial court] commit a clear abuse of discretion in awarding [w]ife an asset which is a Keogh Plan and which is in [h]usband's name alone in that said Plan cannot be transferred to [w]ife's name without significant tax and penalty consequences[?]
3. [Did the trial court] commit a clear abuse of discretion when it refused to bifurcate the divorce [?][iii]

Husband's brief, 4.

After a thorough review of the review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinions of the trial court, it is our determination that the contentions of both parties lack merit. The distinguished trial court produced for opinions, comprising nearly a hundred pages of text. These opinions ably and comprehensively discuss the issues and applicable law in support of the trial court's rulings. Accordingly, we adopt the trial court opinions filed March 17, April 16,

April 29, and May 12, 1997 for purposes of allocatur, adding only the following comments.

Child Custody

We first address wife's objections to the order awarding husband partial custody of their minor son, MPS. wife complains of several procedural errors and deficiencies in the record before this Court.[iv] We are required to comprehensively review trial court decisions in matters of custody. See Costello v. Costello, 666 A.2d 1096, 1098 (Pa. Super. 1995). To that end we require the trial court to provide us with a complete record and a thorough analysis. See In re Davis, 502 Pa. 110, 120, 465 A.2d 614, 618 (1983). Our paramount concern, however, must always be the best interest of the child. See Commonwealth ex rel. Pierce v. Pierce, 493 Pa. 292, 295, 426 A.2d 555, 557 (1981). The docket reflects that this dispute has persisted in excess of five years. The parties' divorce "has been characterized by unusual delay and litigiousness." See slip opinion 3/17/97, at 17. Promoting interminable and vexatious litigation does not serve the best interest of a child. See Commonwealth ex rel. Robinson v. Robinson, 505 Pa. 226, 223, 478 A.2d 800, 804 (Pa. 1984). Instead, the best interests of MPS require a speedy resolution of this matter. See wife's brief, 48 (recognizing the negative impact of this litigation on the children). "Childhood is a small stretch of time in which events and changes can alter a life to its last day."[v] Karis v. Karis, 518 Pa. 601, 607, 544 A.2d 1328, 1332 (1988). The record before us is sufficiently complete to allow us to exercise our appellate function. The procedural errors identified by wife are insufficient to justify prolonging the litigation of this matter. Accordingly, we decline to remand on these grounds.

Wife also complains that the court failed to afford adequate weight to the wishes of MPS. This issue is thoroughly addressed in the trial court's opinion. See slip opinion 4/16/98.

Equitable Distribution

Both parties claim that the court erred in adopting the master's equitable distribution scheme.

> Our scope of review in equitable distribution matters is limited. It is well established that absent abuse of discretion on the part of the trial court, we will not reverse an award of equitable distribution. When reviewing the record of the proceedings, we are guided by the fact that trial courts have broad equitable powers to effectuate justice and we will find an abuse of discretion only if the trial court has misapplied the law or failed to follow proper legal procedures. The finder of fact is entitled to weigh the evidence presented and assess its credibility. The fact finder is free to believe all, part or none of the evidence and

> the Superior Court will no disturb the credibility determinations of the court below.

Gill v Gill, 677 A.2d 1214, 1216 (Pa. Super. 1996) (citations, internal quotations, and corrections omitted).

Wife complains that the court erred n awarding her only 40% of the marital estate. The trial court found that the master fully considered the factors set forth at 23 Pa. C.S. § 3502 and adopted her recommendation. Although the master's 143-page report and recommendation demonstrates a thorough consideration of the statutory factors, it is clear that the most significant factor in her analysis is the size of the wife's separate estate. An antenuptial agreement, executed shortly before separation, secured wife a separate estate in excess of $500,000. This left a martial estate worth approximately $330,000; the record reflects no substantial estate separately possessed by husband. The master explained her analysis as follows:

> Having considered all relevant factors in detail...and under the record of the case defined in the Findings of Fact herein, the [m]aster recommends to the [c]ourt that the marital assets be disproportionately divided giving sixty (60%) percent of the remaining marital assets to [husband] and forty (40%) percent to [wife]. Disproportionate distribution of the marital assets would allow a balancing of the remaining marital assets to provide [husband] an equitable division of assets he spent a lifetime accumulating through daily, uninterrupted employment at DuPont. His long term employment and dependability have permitted him to earn a generous present salary level which should guarantee his economic recovery. [Wife's] separate estate and her employability should allow her economic recovery under the recommended distribution. The [m]aster would have, because of the separate estate, recommended a 65/35 distribution in [husband's] favor, but his present employment and post-divorce reduction in family living expenses are relevant factors in economic recovery and future acquisition of assets. [Wife's] employment situation is less stable, more uncertain, and this must also be considered an important factor in present economic condition, along with options created by her separate estate.

Master's report and recommendation 4/22/96, at 119-20. We find no indication that the court misapplied the law or failed to follow proper procedures. Accordingly, we must affirm the percentage distribution adopted by the trial court.

Husband complains that the court failed to adequately consider several tax implications of the equitable distribution scheme. The trial court

correctly notes that husband had adequate opportunity to present these concerns below and failed to do so. Specifically, husband filed no exception to the master's recommendation on these grounds, and the trial court adopted the recommendations without substantial change. Accordingly, these issues are waived. See McArdle v McArdle, 679 A.2d 1316 (Pa. Super. 1996).

Both parties are dissatisfied with the court's use of the immediate offset method to divide their pension. They now ask us to remand the case for the court to apply the deferred distribution method. We will not. The court was well within its discretion in employing the immediate offset method. The parties enjoyed ample opportunity to reach an agreement on this matter while it was before the trial court. Instead, their behavior was characterized by intractability and extreme litigiousness. We will not remand and continue to expend our Commonwealth's judicial resources on this matter simply because the parties have belatedly reached consensus. If the parties can now work together, they must do so on their own.

Contempt

Wife claims that the court erred in finding her in contempt.[vi] On July 12, 1993, the court found wife "in contempt of court for violating the temporary order of court dated June 10, 1993, by failing to have the children available at Exit 20 on June 26, 1993, for the transfer of custody." Order 6/15/93. Wife admits that she failed to produce the children, but contends that compliance was excused because she had filed a petition for special relief from the order and because the order was erroneous. We will not disturb a court's finding of contempt absent abuse of discretion. See Guadagnino v Montie, 646 A. 2d 1257, 1259 (Pa. Super. 1994). Neither the filing of wife's petition for special relief nor wife's belief that the court was in error excused her from complying with the order of June 10, 1993. See generally Moore v. W.C.A.B. (Reading Paperboard), 676 A.2d 690, 694 (Pa. Cmwlth. 1996) (explaining that a litigant is obliged to comply with a court order until it is reversed). Accordingly, the court was well within its discretion to hold her in contempt and award husband counsel fees.

With regard to the remaining issues, we see no need to complement the thorough disposition provided in the trial court's exhaustive opinions.

The orders of March 17, 1997 and April 16, 1997 are affirmed.

[i] Ms. Shazes reached majority on February 9, 1996.

[ii] Wife attempts to present three new question in her reply brief. These issues, however, are waived by her failure to include them in her principal brief. See Wesleyville Borough v. Erie County Bd, 676 A.2d 298, 301 n.6 (Pa. Cmwlth. 1996) (explaining that a reply brief "may no be used by an appellant as an opportunity to raise new issues that should have been included in the appellant's principal brief") (citation omitted). Moreover, we note that wife's new contentions lack merit.

[iii] Husband expressly waives this issue in his brief. See husband's brief, 40 (stating husband is no longer pursuing his appeal of the bifurcation denial).

[iv] The most procedural error alleged by wife is the court's reliance on the reports and depositions of experts who did not testify at the custody hearing. "Expert reports may not be used in child custody contests unless the author of the report testifies and is subject to cross-examination by the party adversely affected, or unless the parties consent." Cyran v. Cyran, 566 A.2d 878, 679 (Pa. Super. 1989). No expert testified at the custody hearing. See Notes of Testimony (N.T.) 10/12/98. It appears, however, that the parties agreed to handle the expert testimony entirely through depositions. Id. at 162-63. As discussed in the trial court opinion, wife had ample opportunity to depose all the experts involved in the case. See slip opinion 4/29/97, at 2.

[v] In approximately a year and a half, MPS will reach majority.

[vi] Because no sanctions other than attorney's fees were imposed, wife could not appeal the finding of contempt until the final custody order was entered.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH

Kathleen G. Shazes, Plaintiff	:	Civil Action - Law
vs.	:	No. F. R. 1992-970
Michael J. Shazes, Defendant	:	In Custody

OPINION AND ORDER OF COURT

Before HERMAN, J.

INTRODUCTION

Before the Court is a complaint for partial custody filed by Michael J. Shazes against Kathleen G. Shazes. The case involves the parties' son Michael Palmer Shazes currently in Kathleen's custody. Kathleen opposes Michael having any contact with his son. The complaint as originally filed also concerned the parties' daughter Jenny. However, over the course of these lengthy and complex proceedings Jenny reached her 18th birthday and is no longer within the Court's jurisdiction. Although Jenny can no longer be subject to the Court's custody Orders, she has been directly involved in this litigation since its inception. Information pertaining to her is relevant to the Court's findings regarding her brother Michael Palmer. After a thorough review of the record we find Michael Shazes is entitled to partial physical custody of his son.

BACKGROUND AND PROCEDURAL HISTORY

The parties separated on September 2, 1992. They stipulated on October 14, 1992 Kathleen would have primary custody and Michael would have partial custody as the parties could mutually agree.[1] Michael filed a petition for a mental examination of the parties and children. He also filed a

petition for special relief in which he alleged Kathleen had abducted the children from the family home in Kennett Square, Pennsylvania and kept their location in Chambersburg secret from him for two weeks and barred him from partial custody in violation of the October 14th stipulation and Order. Michael alleged Kathleen was "deliberately poisoning the children's minds against him by declaring to the children that their father would abduct them and do them physical harm." (Paragraph 11, petition filed January 11, 1993). Kathleen denied these allegations and pled Michael demonstrated angry outbursts, mood swings and threatened to kidnap the children and to have her committed to a mental institution. Kathleen alleged Michael routinely humiliated the children and that the children were afraid of him.

Pursuant to stipulation the Court entered an Order on January 26, 1993 directing the parties and children to undergo psychological testing. The costs of these tests were to be paid by the insurance carrier of Michael's employer DuPont. Kathleen was given temporary primary custody and Michael was given supervised visitation at Kathleen's home in Chambersburg. Psychologist Howard Blandau evaluated the children and Kathleen. He issued his report on February 10, 1993.

Michael filed a complaint for partial custody on March 4, 1993. Pending the report from the county custody mediator and psychologist Eugene Stecker, the Court gave Michael supervised visitation two weekends per month. The report was filed May 26, 1993. On that same day Michael filed an emergency petition for custody and a hearing was set for June 10, 1993. Michael alleged Kathleen was interfering with his visitation periods and continuing to alienate the children's affections. On June 3rd the Court ordered a home study to be conducted at Michael's home in Philadelphia by the Philadelphia Family Court. The Court entered a temporary Order granting Kathleen primary custody with Michael exercising partial custody on alternating two-week periods.

Shortly thereafter Michael filed a petition for contempt alleging Kathleen had failed to produce the children for transfer to him pursuant to the Order. On July 12, 1993 the Honorable John R. Walker found Kathleen in contempt after a hearing and ordered her to pay costs of bringing the petition.

Pending the custody hearing set for September 20 and 21 Michael was granted custody from August 16 until September 28, 1993 by Order of the Court dated July 29, 1993. Thereafter he was to have custody on alternating weekends until final disposition of the case.

During the summer of 1993, psychiatrist Charles Koch of the Pennsylvania Hospital became involved in the case. He was asked by Patricia Dice, a family therapist in Philadelphia, to participate in a visit with the

children at the home of Michael's mother Josephine Shazes. After three visits with the children he issued a report on July 30, 1993 recommending emergency admittance into the Philadelphia Child Guidance Clinic for the inpatient treatment of the entire family.

On September 13, 1993 Kathleen filed a petition for special relief alleging Michael had injured their son's ankle during his period of custody. Michael Palmer was examined at the Chambersburg Hospital and diagnosed with a sprained and abraded ankle. As would eventually be revealed, the sprain diagnosis was based only on the boy's statements that his ankle hurt and not on any objective findings. Franklin County Children and Youth Services interviewed the boy and transferred the abuse charge to Philadelphia County (Michael's county of residence). That county conducted an investigation and this Court suspended Michael's custody rights until the investigation was complete. On that same day Kathleen filed a Protection from Abuse Petition on behalf of the children which required a full hearing. The PFA and custody hearings were heard on December 13, 1993 but attorney miscommunication caused the matter to be continued until February 10, 1994. Thereafter psychologist Stephen Overcash was contacted by Franklin County Children and Youth Services for an independent assessment of the children. He issued his report December 1, 1993.

On December 28, 1993 Michael filed an emergency petition for a psychiatric examination of the parties and children because of Mr. Stecher's finding that Kathleen and the children were exhibiting signs of paranoia and parental alienation syndrome. Michael alleged the children exhibited bizarre behaviors during their 1993 summer visitation with him. He also cited Dr. Koch's report in support of the petition. Michael's petition was set to be heard simultaneously with the PFA and custody matters.

The hearing was continued upon the parties' stipulation to submit themselves and the children to psychologist James Nutter for an independent evaluation. Dr. Nutter was directed to consult psychological and psychiatric reports issued by other professionals with prior involvement in the case. The parties agreed costs of the exam and report were to be paid by DuPont's insurance carrier. Dr. Nutter issued his report on June 27, 1994. The final custody hearing was set for October 20, 1994 and then continued until December 19 and 20, 1994. In the meantime the PFA Order prohibiting Michael from having access to the children was extended for another year.[11] On December 12, 1994 Kathleen find a motion in limine to preclude the admission of reports or evaluations without the live testimony of the witnesses. Her motion was granted.

The Court heard evidence on December 19, 1994. The temporary PFA Order was dismissed because its provisions were incorporated into an Order of Court issued that same day. The parties agreed to submit to the

Court a list of potential counselors whose task it would be to render outpatient therapy to the children and the parties and to determine whether the children's relationship with their father could be restored. The Court was to select a treatment provider to conduct counseling to be paid through Michael's employer.

On January 30, 1995 the Court ordered the entire family to participate in outpatient treatment at the Philadelphia Child Guidance Clinic. Kathleen contended all mental health evaluators previously involved in the case were biased because they were paid through DuPont. While not conceding any such bias exited, this Court directed that none of those evaluators should personally participate in the treatment. However, previous reports issued by those prior evaluators were to be made available to the Clinic upon its request. The Court was to review the Clinic's findings and recommendations by April 15, 1995.

The Clinic issued its report in or about March 29, 1995. It advised outpatient therapy was not a feasible approach to addressing the family's problems and recommended immediate inpatient treatment for the entire family. The conclusion of the custody hearing was set for September 21, 1995. In the meantime Kathleen's attorneys requested leave to withdraw from he representation with her consent. Kathleen obtained new counsel the day before the hearing and was granted a continuance. She then filed a motion for a protective order as to depositions Michael was scheduled to take of expert and lay witnesses, depositions which Kathleen herself had previously insisted upon. Her motion was denied and a continuance request she simultaneously filed was also denied. The depositions of Drs. Overcash and Nutter were taken on October 10, 1995. The custody hearing was concluded on October 12, 1995.[iii]

On April 18, 1996 Michael filed a motion to take a telephone deposition of Janet McGehee, Kathleen's sister. The motion was granted despite Kathleen's objections. Janet McGehee was deposed in September of 1996. In the meantime Michael filed a petition for a rule to show cause why he should not be granted contact with the children pending the Court's final decision of the custody matter. He averred that the indication of abuse report had been found unsubstantiated and was expunged by the Department of Public Welfare on March 20, 1996. (Exhibit "E" of Michael's petition filed April 24, 1996). Kathleen opposed any change in circumstance pending the close of evidence. This Court denied Michael's petition and preserved the status quo.

Dr. Charles Koch's deposition was taken on October 30, 1996. He could not be deposed until that time because Kathleen had filed an ethical complaint against him with the Pennsylvania Psychiatric Physicians in September 1995. (Koch's deposition, pp 42-44). Dr.

Koch was cleared of ethical wrongdoing but the process delayed his deposition and the custody matter in general. The record was complete upon the filing of his deposition. The parties submitted proposed final Orders to the Court in December 1996.

REVIEW OF EXPERT OPINION

Dr. Howard Blandau interviewed Kathleen and the children in February 1993. He noted they were extremely anxious and fearful. He found Kathleen to be psychologically healthy despite having been emotionally abused by Michael. He believed the children needed to be shielded from their father whom he concluded was the cause of their fears. Dr. Blandau never interviewed Michael but accepted at face value all statements and beliefs expressed by Kathleen and the children about their relationship with Michael. After reviewing all the evidence and evaluations we find Dr. Blandau's conclusions naive and unreliable.

Franklin County Court mediator and psychologist Eugene Stecher interviewed the parties and the children in April 1993. Both children adamantly refused to communicate or cooperate with their father in any meaningful way during the home visit. They demonstrated a strong contempt and disrespect of him. In addition, Michael Palmer was highly fearful of his father. He recounted an incident when Michael shot a squirrel and laughed as he watched it suffer. Both children feared guns and knives their father kept in their home and had shown to them. They complained their father disciplined them with a belt, yelled at them without justification and was unduly strict with house rules. They also complained he teased and humiliated them. Jenny was extremely rigid in her attitudes and refused to cite any positive experiences or feelings about her father. Michael Palmer looked to his sister for direction and closely echoed her interpretations and attitudes.

Mr. Stecher found Michael Shazes exhibited obsessive-compulsive personality traits, displayed some difficulty managing anger and communicating with his children. He also found Michael suffered from anxiety, depression and feelings of inferiority in relation to his wife Kathleen. His behavior was sometimes immature and his judgment less than perfect. However, he made attempts to mollify these traits and was eager to see his family obtain psychological therapy. Mr. Stecher concluded Michael was not a danger to his children and there was no basis to isolate him from them.

According to Mr. Stecher, Kathleen exhibited extremely high levels of narcissistic, histrionic and paranoid traits. She was demanding, dogmatic and manipulates situations to maintain a sense of control. Minor incidents

are dramatized and exaggerated into major crises as she relentlessly places her own needs ahead of the needs of others. Without justification she interprets the actions of others as personally threatening and will counter-attack to maintain her defenses.

Kathleen accused Michael of trying to poison her food. Michael told Mr. Stecher Kathleen once believed drug dealers at DuPont were trying to kill her. During the marriage she had been involved in a long series of law-suits involving hiring and firing of numerous attorneys. Over the course of many years she consulted numerous doctors about their son's ailments which Michael believed were merely psychosomatic and not grounded in medical fact.

Mr. Stecher determined the lack of affection the children displayed toward Michael was not a new phenomenon but was largely the result of Kathleen's deliberate mental and emotional manipulation. He found Kathleen and the children showed signs of parental alienation syndrome, a documented psychological disorder:

> Paranoia is defined as the projection of one's own feelings of inferiority/inadequacy/hostility onto the spouse who is then viewed as malevolent. When the rejecting parent has a long history of dominance in the family, the children may be more likely to identify with that parent. The children develop a disorder toward the alienated parent which is characterized by a lack of verbal ambivalence, dwelling on inconsequential "indignities," total removal from the family of the hated parent, denial of any positive input into the children's life, and the definite statement that the children never wish to see the hated parent again....Mother's tendencies toward control, self-centeredness, over-dramatization, and perceptions of threat are of greater consequence for the children than father's difficulties with anger management, communication, and reactive depression. Father has made a much more solid effort to get help for himself than has mother....Father is less likely than mother to allow his own personal agenda to interfere with future growth and development of the children.

(Mediation Report, pp. 13-14) Mr. Stecher recommended Michael be primary custodial parent with therapy employed to counteract the children's negative ingrained feelings.

This Court has also reviewed the report and deposition of Dr. Charles Koch, M. D. Since the summer of 1995, Dr.Koch is Clinical Associate Professor in children and adolescent psychiatry at Jefferson Medical College. He observed the children and Michael Shazes at the home of Michael's mother Josephine Shazes in the summer of 1993. At the request of family therapist and visitation supervisor Patricia Dice he made

three visits and documented his observations in a report issued July 30, 1993. Ms. Dice requested Dr. Koch's participation because she was unable to communicate with the children whom she believed were exhibiting unusual behavior.

Michael Shazes told Dr. Koch Kathleen had accused him of being possessed by demons, physically abusing her, sexually abusing Jenny, having numerous affairs, being homosexual and having AIDS. Michael informed Dr. Koch the children refused to speak with him or his mother during their two-week stay, refused to bathe or change their clothes. They took their suitcases with them into every room including the bathroom. They refused to speak to or look at Dr. Koch. They were hostile, aggressive, disrespectful and contemptuous of their father but showed no signs of being afraid of him. Rather than speak to him, they would knock on the table and make yelling noises to communicate. They rebuffed all Michael's efforts to engage them in any activities and refused to speak to old family friends whom Michael invited to visit.

Dr. Koch was told of an incident when Josephine mistakenly cooked pasta for the family, forgetting Michael Palmer was allergic to eggs and that pasta contains eggs. She discovered the error before the boy ate the pasta. Jenny tried to grab the box of pasta and shove it into her bag and proceeded to yell loudly directly into her grandmother's face. Her brother followed suit. Josephine found this incident bizarre and upsetting. Michael testified at the October 12, 1995 hearing that Jenny "screamed and screamed" at him and Josephine. Josephine told Dr. Koch she had enjoyed a warm relationship with the children before the parties' separation. The children brought 38 pounds of food with them for the second visit and refused to eat anything from their grandmother. (p. 22). Dr. Koch presumed Kathleen had given them the food.

Michael recounted to Dr. Koch Kathleen's longstanding belief that other people were interested in seeing her fail. A large proportion of her energy over the years had been devoted to avoiding being shortchanged by others. She left a Ph.D. program because she was convinced people were out to do her harm. She expressed similar fears about co-workers at DuPont which caused her to leave her job there.

Upon his third visit Dr. Koch noted Michael Palmer was limping slightly, favoring his right foot and had a rag stuffed into his sock. He did not appear to be in pain and his ankle did not appear to be swollen. He would not respond to his father's inquiries or offers to take him to the hospital. Neither Michael nor his mother knew what had happened although Josephine suggested the boy might have hurt himself while vigorously practicing karate exercises with his sister. Michael Palmer would not allow either his father or Dr. Koch to examine the ankle and Dr. Koch

doubted the injury was genuine. At the October 1995 hearing, Michael denied having injured his son's ankle. In this context we note Michael had reported to Mr. Stecher that his son had once tried to fake a broken leg at the doctor.

Dr. Koch concluded the children were suffering from severe parental alienation syndrome. Although he did not interview Kathleen, he believed there was sufficient evidence at his disposal to find she was manipulating the children's affections by augmenting and reinforcing their preexisting dislike of their father. Dr. Koch detected no basis for barring Michael from contact with the children. He strongly recommended inpatient therapy for the entire family. He believed this was imperative to restore the children's mental health and reconcile them with their father.

Ms. Dice visited the children at Josephine's home in the summer of 1993 after being contacted by Dr. Lorraine Saints, Michael's therapist. She corroborated Dr. Koch's observations and findings regarding the children's bizarre and unusual behavior. She also detected no visible injury to Michael Palmer's ankle.[iv]

Dr. Jon Bjornson, deposed in November in 1993, is a forensic psychiatrist at Thomas Jefferson University Hospital. He was contacted in the fall of 1993 by the employee assistance program at DuPont to provide an independent evaluation of Michael Shazes's parenting capabilities. He did not interview Kathleen and the children but interviewed Michael and reviewed background records about the family from Dr. Saints, Dr. Koch, Eugene Stecker and other evaluators mentioned in Mr. Stecher's report.[v] He found Michael suffered from anxiety, depression and compulsiveness and was emotionally dependent on Kathleen. He was not, however, a schizophrenic as alleged by Kathleen. Moreover, the record indicated he was reliable and responsible in his working life and was competent to handle the parental role, posing no discernible danger to his children.

Stephen Overcash, Ph. D. and clinic psychologist, interviewed the children and issued a report in December 1993.[vi] He became involved with the case when contacted by Franklin County Children and Youth Services and later by Kathleen. He did not interview wither Kathleen or Michael. Michael Palmer expressed extreme fear of his father and employed highly developed defense mechanisms to deal with his fear. Relying heavily on psychological testing, Dr. Overcash found Michael Palmer unusually anxious and distrustful of others. He withdraws from stressful situations is overly concerned with conforming to authority and avoiding social ridicule. His severe anxieties and repressed anger may be the cause of physical complaints such as headaches, fatigue and gastrointestinal problems. He requires therapy in order to handle extended contact with his father.

Using the same testing and interview procedure, Dr. Overcash found Jenny exhibited extreme anxiety and fear regarding her relationship with her father. She was very reluctant to admit personal shortcomings and tried to disguise these with an overemphasis on conformity to authority. She was preoccupied with maintaining emotional control and avoided discussing psychological problems. Neither she nor her brother was amenable to family or group therapy because of their intense distrust of others and adamant desire to have no contact with their father. Dr. Overcash believed the children's intensely negative feelings about their father would diminish with gradual contact and the appropriate therapy.

Dr. Nutter conducted an independent evaluation of the Shazes family at the Court's request. He issued his report in June of 1994. He was also deposed in October of 1995. He conducted four interviews - two with the parties, on with Michael and the children and one with Kathleen and the children. Each interview lasted two hours and included the administering of personality tests. Dr. Nutter also reviewed numerous court petitions and professional reports in making his findings.

Dr. Nutter found Michael suffered from depression caused by family problems and had a history of obsessive and compulsive behavior. Michael was somewhat reluctant to admit he had any role in causing conflicts with the children, although it was clear from the report of professionals directly connected with Michael that he often displayed "irritability, compulsiveness, anger and a demanding demeanor." He also exhibited feelings of inadequacy and inferiority but was not mentally ill.

As to Kathleen, Dr. Nutter agreed with Mr. Stecher and Dr. Koch that Kathleen's personality contains "narcissistic, histrionic, and paranoid features: and that she is rigid, controlling and perfectionistic and exaggerates minor incidents into major crises. Kathleen copied her answers to the personality tests on a notebook hidden under the test booklet and intimated that Michael's therapist had given him the answers to the test in advance. She doubted Dr. Nutter's ability to be impartial based on the fact that he was born in the state of Delaware, the corporate headquarters of DuPont. After interviewing her and reviewing hundreds of pages of court documents and expert reports, Dr, Nutter concluded Kathleen showed symptoms of Paranoid Personality Disorder. These symptoms include:

> 1) expects, without sufficient basis, to be exploited or harmed by others; 2) question[s], without clear justification, the loyalty or trustworthiness of friends or associates; 3) reads hidden demeaning or threatening meanings into benign remarks or events; 4) bears grudges or is unforgiving of insults of slights; 5) is reluctant to confide in others because of unwarranted fear that the information will

be used against her; 6) is easily slighted and quick to react with anger or to counterattack; 7) questions, without justification, fidelity of spouse.

Manipulating the children's preexisting distaste and contempt for their father, Kathleen instilled in them sever anxiety and fear of Michael without adequate justification. Dr. Nutter agreed with both Mr. Stecher and Dr. Koch that the children were victims of parental alienation syndrome. He diagnosed Induced Psychotic Disorder, or folie deux, meaning "craziness of two" or in this case, three.

Dr. Nutter found Jenny was extremely rigid in her perceptions and viewed the world, events and people in black and white terms. she refused to recall any positive memories or thoughts about her father which Dr. Nutter found highly unusual. She was adamant about never wanting to see her father again and was unable to say anything positive about people previously associated with him, such as her grandmother, old family friends and other relatives. Like her mother, Jenny's personality contains phobic and perfectionistic features with a marked tendency to overdramatize and exaggerate minor anxieties and indignities into major crises.

Like his sister, Michael Palmer is highly rigid, unforgiving, mistrustful and phobically fearful of his father. Dr. Nutter suspected the boy's physical complaints were mostly psychosomatic and with Kathleen's encouragement formed the basis for his anxiety reactions and school avoidance which was linked to avoidance of his father. During his deposition Dr. Nutter noted Michael Palmer consistently looked to his sister for answers and direction. Both children's comments were so similar to Kathleen's that Dr. Nutter suspected their comments were rehearsed.

Dr. Nutter found Michael Shazes to be a very earnest, intense person with a history of reacting immaturely to the children over the years. He had some trouble acknowledging his own role during the year immediately prior to separation in planting the seed of his children's negative view of him. However, Dr. Nutter did not find any credible evidence to support the notion that Michael had committed abuse justifying a forced isolation from his children.

The children need gradual and consistent therapy to overcome their ingrained fear and hatred of their father. They need to learn conflict management and the ability to forgive their father for minor slights from the past and to develop a more full and mature perspective about him and the family dynamics. Dr. Nutter recommended the children have weekly contact with Michael for several hours over a period of several months.[vii] Although he doubted outpatient therapy would be successful, Dr. Nutter did not believe inpatient family treatment was feasible. Kathleen is adamantly opposed to

it and the children have a history of reacting hostilely based on an erroneous belief which Kathleen fostered that such treatment is equivalent to commitment to a mental institution where they would be drugged and have IV tubes inserted in their arms. (Deposition of Dr. Koch, p. 82). Dr. Nutter reluctantly concluded the only option was individual therapy and joint counseling between father and son. Gradual reintroduction of Michael Palmer to his father will cause the boy some short-term psychological stress and anxiety as painful memories and feelings are revived for the purpose of achieving a more psychologically healthy long-term result. However, the longer the boy remains artificially isolated from his father, the more difficult it will be to ever reconstruct any semblance of normality to their relationship.

In the fall of 1994 Kathleen was referred to Dr. Gerald Cooke for evaluation. He found she had mild histrionic traits and was self-centered. He did not diagnose her as paranoid or suffering from any mental illness or disorder. However, he also stated in his deposition taken in December of 1995 that unless it is established that a parent has been physically or sexually abusive, children generally benefit from contact with that parent. They should receive the necessary counseling to maintain that relationship.

The final evaluation was performed in early 1995 pursuant to Order of Court by the Philadelphia Child Guidance Clinic. Dr. Pascal Scoles issued a report outlining the Clinic's findings after extensive interviews with the parties and the children. At that time Michael was still hoping to reconcile with Kathleen and to reunify his family. Dr. Scoles noted the same traits in Michael as had previous evaluators: deep religious faith, intense attention to detail and an emotional dependence on Kathleen. Dr. Scoles also concurred that Kathleen exhibits paranoid traits and is involved in a symbiotic relationship with her children which is emotionally unhealthy for both her and them.

Dr. Scoles found both children highly intense, nervous and anxious. Their personalities were characterized by a paranoid, phobic fear of their father. They were obsessed with the idea that their father was trying to harm them and refused to consider alternate explanations for events despite the act that he could not have been present for some of the incidents described. Michael Palmer was unable to concentrate and was easily distracted. He could not maintain eye contact with anyone but his sister and to Dr. Scoles he appeared to be in an altered state of consciousness. When relating the alleged leg twisting incident, Michael Palmer was unsure about which leg was involved an eventually said it was his right leg. Jenny immediately corrected him, stating it had been his left leg. Dr. Scoles found it unlikely that an incident which had so preoccupied the boy would be so easily forgotten and doubted the veracity of the allegation. Dr.

Scoles also found incredible the children's assertions that Dr. Koch had threatened to put them in a hospital and have tubes put down their throats if they did not obey him.

Dr. Scoles and his Clinic associates recommended that the Shazes family be treated as a unit because all were deeply disturbed. Even family therapy was not likely to be successful unless undertaken for a long period of time. The Clinic concluded if intensive treatment did not begin immediately the children would suffer further psychological damage.

Janet McGehee, Kathleen's sister and a lay witness, was deposed by telephone in September 1996. She had limited contact with the Shazes family before the separation. It was evident to her the children did not respect Michael and their attitude was encouraged by Kathleen. McGehee never noted the children feared their father. McGehee moved to California in the spring of 1992. That summer Kathleen told her Michael was tampering with their food, cutting furniture with knives and damaging Jenny's toys. When McGehee voiced doubts to Kathleen about these incidents Kathleen stated that if she did not accept her version of these alleged incidents, they could have no further contact. The sisters have had no contact since the fall of 1992.

McGehee testified that before Kathleen and Michael were married, Kathleen expressed fear that people at work would harm her if she revealed damaging information she had about DuPont. McGehee never witnessed any of the bizarre behaviors Kathleen ascribed to Michael, such as forbidding the family to flush the toilet frequently and threatening the family with knives and guns. Kathleen never told her sister Michael was abusive to her or the children.

Michael testified at the October 1995 hearing that although Kathleen routinely ridiculed him to the children during the marriage he was surprised to learn in the summer and fall of 1992 that the children were also afraid of him. He admitted as to having shot a squirrel in the backyard but maintained his son was excited in a positive way about the incident. He denied engaging in the conduct alleged by Kathleen such as the poisoning of food, slashing furniture or threatening his family with knives and guns. By the spring of 1993 the children were noticeable more alienated from him and relations between them were strained. He was obviously distressed by being completely barred from all contact with them since the summer of 1993. At the 1995 hearing he expressed the strong desire for family therapy at the Philadelphia Child Guidance Clinic based on its conclusion and the conclusions of other experts that individual outpatient therapy would be ineffective.

DISCUSSION

In presiding over this lengthy and untractable litigation this Court has reviewed all the expert reports and depositions, interviewed the children on at least two occasions and listened to the parties testify at various hearings. We place particular weight on the findings of Mr. Stecher, Dr. Nutter, and Dr. Scoles as outlined above. We have also taken into account the conclusions of Dr. Overcash, Ms. Dice, Dr. Koch, Dr. Bjornson and Dr. Cooke.

Certainly the relationship between Michael and his children before separation was emotionally distant and imperfect. Michael felt inferior to his wife and expressed anger over his emotional dependence on her. Such traits, combined with obsessive-compulsive tendencies and an immature communication style, worked to compromise his relationship with the children even before the separation. Clearly, this family had longstanding interpersonal conflicts. However, it is undeniable that Kathleen magnified the children's preexisting dislike of their father and fostered in them an unjustifiable hostility and terror. She manipulated their mental and emotional vulnerability during a time of stress brought on by the dissolution of the family unit. This was done deliberately I order to further alienate them from him and to enlist their participation in fueling the conflict caused by the marital breakdown. She has used this approach consistently since the start of this litigation to frustrate Michael's parental rights with the result being that she has done severe psychological damage to her children.

Both children now mirror traits displayed by their mother: a rigidity of temperament, unreasonable phobias, unjustified hostility toward others and a tendency to exaggerate minor problems into overwhelming crises. It is unclear whether these traits are so ingrained as to be permanent features of their personalities and are impenetrable obstacles to restoration of the parent-child relationship. Jenny is now 18 and beyond the jurisdiction of this Court. Michael Palmer, whom the experts found the more disturbed of the two children, needs to be gradually reintroduced to his father in the context of supportive therapy in order to dispel his phobias and develop the ability to cope in a mature way with the normal stresses life.

We do not find credible Kathleen's assertions that all the psychologists, therapists and psychiatrists who rendered opinions placing her in an unfavorable light displayed bias and partiality simply because arrangements were made for their payment through Michael's employer DuPont. During the early stages of the litigation she agreed to submit therapy bills to DuPont for payment. It is therefore disingenuous for her to claim such payment renders the experts' opinions inherently biases and worthy of being disregarded by this Court.

We also note the 1993 abuse charge arising from Michael Palmer's

alleged ankle injury was found unsubstantiated and expunged on March 20, 1996 by the Department of Public Welfare following a hearing. (Exhibit E attached to Michael's motion filed April 24, 1996). That court found there was a strong possibility the boy faked his injury in collusion with his mother and sister and this was used as leverage in the custody litigation to frustrate Michael's parental rights.

We disagree with Kathleen's assertions that the record shows the Court promised the children they would never again have to see their father. If the children hold that belief, it is yet another example of Kathleen's misrepresentation of events for the purpose of mentally and emotionally manipulating the children against their father. There is likewise no basis for Kathleen's contention that is it a violation of federal law to require her son to cross state lines in order to facilitate Michael's parental rights. It is a common feature of life in this country that family members often live in different states. It is routinely ordered that children cross state lines so that the custodial rights of neither parent will be frustrated.

Kathleen contends that this case has been unduly complicated by the fact that Franklin County has retained jurisdiction even though neither party has lived here since June of 1994. We agree but are constrained to note that neither party ever requested a change in venue throughout this lengthy litigation. Pa. R.C.P. 1915.2(d).

We are convinced there is ample evidence in the record to find Michael Shazes is entitled to partial custody of his son. This Court is fully committed to ensuring Michael's parental rights. Michael is free to pursue outpatient therapy for himself and his son during his periods of partial custody. While there is no guarantee Michael will ever be able to reclaim his son's affections, there remains the hope that by gradually increasing his contact, a seed will be planted for the eventual growth of more normal, positive father-son relations. Although it is beyond the power of this or any other Court to force a child to love his father, it is possible that as Michael Palmer grows to adulthood, he will develop the capacity to view his father and the breakdown of his family in a more objective light.

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH

Kathleen G. Shazes,	:	Civil Action - Law
Plaintiff	:	
vs.	:	No. F. R. 1992-970
Michael J. Shazes,	:	
Defendant	:	In Custody

ORDER OF COURT

NOW this 16th day of April, 1997, the Court hereby orders that the parties, Kathleen G. Shazes ("mother") and Michael J. Shazes ("father") will have shared legal custody of their son Michael Palmer Shazes, born October 15, 1981.

Mother will have primary physical custody. Father will have partial physical custody as follows:

(1) Custody shall be exercised in the presence of a therapist, psychologist, or psychiatrist of father's choosing. The function of the therapist, psychologist of psychiatrist will be to assist in the reconstruction of the father-child relationship to an extent that the father can enjoy unsupervised contact and and communicate with his son. The professional will advise the Court as to the progress of counseling and when changes to this Order can be made which would expand the father's rights beyond the supervised counseling visits. The Court will retain supervising jurisdiction over this Order for the purpose of modifying father's rights upon petition of counsel and with the support of a professional recommendation.

(2) In accordance with Section 5306 of the Domestic Relations Code and prior to implementation of the Order the defendant, Michael J. Shazes, will submit to the court a plan for carrying out the provisions of paragraph (1) above.

(3) Until such time as recommended by the professional counselor, father shall not participate in the transportation of Michael Palmer to and from the periods of supervised counseling. Upon recommendation of the counselor, the father will take over all transportation to and from the visits.

(4) Mother and father shall work together to ensure the best interests of Michael. Each party shall at all times encourage Michael to comply with the terms of this Order. While in the presence of Michael, none of the parties shall make remarks or do anything that in any way may be construed as derogatory or uncomplimentary to the other party and it shall be the duty of each party to uphold the other as one whom Michael should respect and love.

(5) The parties shall consult in writing with one another to the extent possible regarding matters of major importance in Michael's life, this to include, medical, educational and religious concerns. The parties are

directed to share information about these matters without the necessity of a request by the other party. Should a request for information be made, the parties are further directed to make this information available as soon as possible.

This Order may be modified by the Court upon written stipulation of the parties.

The provisions of this Order supersede all prior Orders entered in this matter. All prior Orders precluding father from having contact with his son are hereby VACATED.

THIS COURT RETAINS JURISDICTION OF THE CASE UNTIL FURTHER ORDER OF COURT.

By the Court,
S/_____
Douglas W. Herman, J.

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH

Kathleen G. Shazes, Plaintiff	:	Civil Action - Law
vs.	:	No. F. R. 1992-970
Michael J. Shazes, Defendant	:	In Divorce

SUPPLEMENTAL OPINION

Before HERMAN, J.

The parties in this case were separated on September 2, 1992. They participated in four days of Master's hearings after which the Master issued a report and recommendation on the issues of divorce, alimony, alimony pendente lite, equitable distribution, counsel fees, costs and expenses. Both parties filed exceptions. Before the Court rendered its decision, defendant Michael J. Shazes filed a petition to bifurcate which

plaintiff opposed. The Court issued an Opinion and Order on March 14, 1997 disposing of the exceptions to the Master's report and entering a divorce decree. The issue of bifurcation was made moot by the issuance of the Opinion and Order. Plaintiff Kathleen G. Shazes filed a notice of appeal and the Court directed her to file a concise statement of matters complained of on appeal. Plaintiff raises thirty-seven grounds for appeal. Because the Court has already addressed most of these issues at length in the prior Opinion we will discuss only those issues which require clarification.

Plaintiff's appeal issue #4.:

> The Judge erred as a matter of law and abused his discretion in determining the divorce decree was appropriate and the questions raised by the bifurcation were moot without commenting that the economic issues raised in the bifurcation, such as pension rights and beneficiary rights to pension, pension funds and life insurance, jointly titled property, and other economic issues that depend on the marital status of the parties, were not resolved by the March 14, 1997 Order of Court.

A review of the record indicates both parties were requesting entry of a divorce decree during the Master's hearing. Plaintiff did not oppose the recommendation that a decree be entered in her sixty-five exceptions to the Master's report. The first time plaintiff opposed the entry of the decree was in response to defendant's petition to bifurcate the divorce from the economic issues raised in the exceptions which had not yet been resolved by the Court. Plaintiff opposed bifurcation because of concerns that terminating her status as defendant's spouse pending the Court's deposition of the exceptions would jeopardize her pension rights as well as other property rights. A hearing on defendant's bifurcation petition was held on November 1996. This court was subsequently able to review the entire record before the Master and issued an Opinion and Order on March 14, 1997 disposing of all economic issues raised during the Master's hearings and in the parties' exceptions.

Now that the Court has entered the divorce decree and issued its decision on the economic claims, plaintiff for the first time argues the finalization of the divorce must await appellate resolution of all economic issues. We are constrained to point out it was necessary for this Court to first dispose of the exceptions as they were presented and issue the divorce decree before the case could be in an appealable posture. It is clear plaintiff is dissatisfied with the Court's plan for equitable distribution and is now attacking that

decision by alleging the case was not in the correct posture for the entry of the divorce. We respectfully submit the bifurcation issue was made moot by our disposition of all pending economic issues as raised in the exceptions.

Plaintiff's appeal issue #16:

> The Judge erred as a matter of law and abused his discretion in denying Plaintiff rent and moving expenses by wrongly determining the moving expenses were incurred before separation and also finding Plaintiff not credible concerning threats of Defendant without commenting that the Judge himself had issued a Protection from Abuse against Defendant in September 1993, renewed the PFA in August 1994, and incorporated the PFA into the Custody Order in December 1994 and without commenting that the Protection from Abuse law specifically provides for payment of rent and moving expenses.

The initial September 1993 temporary Protection from Abuse Order was entered and extended in the midst of the ongoing custody case assigned to the same docket number. No final hearing was ever held on the merits of the petition for a protective order. The record in the custody case remained open pending the taking of depositions of expert witnesses in the field of psychology and psychiatry who had examined the parties and their two minor children. The protection Order merely served to preserve the status quo until the custody issues could be decided.

The record in the custody case was completed and closed in December 1996 and the Court issued its Opinion and Order concerning the parties' minor son on April 16, 1997. We found plaintiff's claims of defendant's abuse of her and their children were not credible based on evidence presented to the Master as well as our own observations and analysis of the parties, the children and the numerous reports issued during the custody litigation.

In her appeal ground #31, plaintiff contends:

> The Judge erred as a matter of law and abused his discretion in entering an Order of March 31, 1997, without Plaintiff's knowledge or agreement and for which Plaintiff has not yet been served, for medical coverage of the two children without provision for Plaintiff before the appeal period was over and without commenting that Chester County has jurisdiction over the support and medical insurance issues.

After a thorough review of the evidence before the Master, we denied plaintiff's request for alimony. We also determined that defendant was not obligated to retain plaintiff as beneficiary on any insurance policies in light of the amount of money defendant was ordered to pay plaintiff in equitable distribution and other relevant factors. The purpose of the March 31 Order was to ensure that the parties' children would remain covered under the medical insurance plan provided by defendant's employer. While spousal and child support were ordered by Chester County during the pendency of the litigation, the entry of this Court's final Order disposed of all economic disputes between the parties as presented through their exceptions to the Master's report and recommendation. Defendant is still required to pay child support according to the Chester County Order.

Plaintiff's issue #34 is:

> The Judge abused his discretion in requiring Plaintiff to file exceptions to the Master's hearing and to the Judge's Opinion and Order of Court while Plaintiff is without her file, Plaintiff is without the record of the last two days of the Master's hearing, and Plaintiff is without counsel due to lack of finances and the judicial prejudice of the Court.

This Court complied with Pennsylvania Rule of Appellate Procedure 1925(b) in directing plaintiff to file a concise statement of matters complained of on appeal. the transcript of the last two days of Master's hearing were placed in the case file and made available at the office of the prothonotary upon their completion. The stenographer subsequently took possession of the two transcripts in order to ensure payment from plaintiff. The stenographer made them part of the record on October 30, 1996 upon payment from defendant and they have been available, upon request, to both parties since that time from the office of the prothonotary. Before the stenographer repossessed them, plaintiff utilized those transcripts in preparing a brief to the Court on her exceptions. Plaintiff's claim she is without financial resources to engage counsel was thoroughly addressed in the March 14, 1997 Order and we incorporate that discussion here.

We respectfully submit no error was committed in any aspect of these proceedings and request the affirmation of the March 14, 1997 Order.

Respectfully submitted,

S/_____

DOUGLAS W. HERMAN, J.

Date: 17 Apr 1997

[i] The parties have shared legal custody of both children throughout this litigation.

[ii] Around this time Kathleen filed a motion to have Michael's attorney Timothy Knauer removed for a conflict of interest. A hearing was held on October 20, 1994. Before the Court could render a decision Attorney Knauer withdrew as Michael's counsel and Janice M. Hawbaker, Esquire entered her appearance.

[iii] Kathleen did not testify at that hearing.

[iv] Patricia Dice was deposed in December 1995.

[v] These individuals included Ted Baron, a pediatrician at Hershey Medical Center, and psychologist Paula Malone, M. D.

[vi] Dr. Overcash was also deposed in October 1995.

[vii] This recommendation obviously can no longer apply to Jenny.

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

KATHLEEN G. SHAZES,	:	Nos. 491 and 492 Allocatur
	:	Docket 1998
Petitioner		
v.	:	Petition for Allowance of Appeal
	:	from the Superior Court
MICHAEL J. SHAZES,	:	
Respondent	:	

ORDER

PER CURIAM:

AND NOW, this 21st day of September, 1998, the Petition for Allowance of Appeal is hereby DENIED.

APPENDIX D

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

KATHLEEN G. SHAZES,	:	Nos. 491 and 492 Allocatur
	:	Docket 1998
Petitioner		
v.	:	Applications for Reconsideration
	:	
MICHAEL J. SHAZES,	:	
Respondent	:	

ORDER

PER CURIAM:

AND NOW, this 19th day of November, 1998, the Applications for Reconsideration are hereby DENIED.

APPENDIX E

1. DuPont Memo of October 26, 1992:

INTEROFFICE MEMORANDUM

Date: 26-Oct-1992 01:14pm
From: CAMPERCM
CAMPERCM@ISCDCVM1@CDCIL1@ESVAX@MRGATE@ESV
Dept:
Tel No:

TO: SJAZESMJ@A1
Subject: Situation
VHSmail to information: EXVAX::SHAZESMJ
Date: 10.26.92 13:06:21
To: SHAZESMJ--ESVAX
*** Reply to note of 10/26/92 12:39
From: Curtis M. Camper
Subject: Situation
Michael:
I spoke w/ Jim Nutter and mailed to Kathleen the necessary paperwork to get treatment started. It is extremely important for you to 1) understand that it is my professional opinion that Kathleen has delusional (paranoid) tendencies which is characterized by bizarre behaviors. 2) You or nobody else can directly make her get treatment. 3) Know that she will continue to make unreasonable demands of you OR outrageous accusations. 4) Understand that you are responsible and accountable for the welfare of your children both physically and emotionally and SHOULD be proactive and assertive in FORCING Kathleen out of her comfort zone and exposing her at "any cost". To date your actions have been "reactive and passive". I suggest that you explore with your attorney, Child Protective Services, etc. what recourses you have available. In that you have given custody of the children to Kathleen, you MIGHT be somewhat at a disadvantage. Michael, I am sorry, there's nothing I can do to "force" Kathleen into treatment. However, I am optimistic that YOU have more power than you recognize. I agree with Dr. Kaye in that you MUST get tough or sit and watch your family be destroyed. I am leaving town 10/29 and will be returning 11/10. A message can get to me via the regional office, although my response time may be delayed somewhat.

Good luck, you know what to do!!
Curt

2. July 30, 1993 Report of Dr. Koch - page 3

Mrs. Dice had done a home study here in Philadelphia at the request of the courts during custody mediation. Mrs. Dice, a family therapist, had been retained by the DuPont Company Employee Assistance Program to complete the study for Mr. Shazes, who is a DuPont employee. Originally Mr. Shazes had been hopeful that he would be able to take his children with him to see his therapist, Dr. Lorraine Saints, a clinical psychologist from Bear, Delaware, who is also a preferred provider in the DuPont Employee Assistance Program. However, the children have refused to accompany their father to any sessions with Dr. Saints, or subsequently with Mrs. Dice when sessions or time with her were made available to them in their home. Dr. Saints visited the children at home, but the children have refused to speak with either Dr. Saints or Mrs. Dice, both of whom have offered the children a chance to speak directly with them, either alone, alone together (so the children could feel supported by the presence of each other) or with their father. There was no response to these suggestions.

I am also retained by the DuPont Employee Assistance Program as an exceptional provider. I was originally contacted by Mrs. Dice on behalf of Mr. Shazes to determine whether I would be able to do this consultation. My involvement in this case has been authorized by Walter Beame, Ed.D., Regional Manager of the DuPont Employee Assistance Program, and Susan Schoenberg, M.S.W., Employee Assistance Consultant. This authorization has been provided verbally through Mrs. Dice in an effort to provide Mr. Shazes with the help he is requesting.

3. Deposition of Dr. Bjornson, November 18, 1993, page 26:

Q. And the basis of this report is your interviewing of Mr. Shazes and the various reports and data –
A. Yes, sir.
Q. – that you discussed and mentioned to us today?
A. I might mention, I did not know that you were involved with this case. This was basically a request of DuPont's EAP. Normally I'm referred cases specifically for treatment or employment, or fit for duty kind of things, or as I said for treatment.

In this particular case, I was not consulted either as a partial person, as the defendant's or plaintiff's representative. I was basically asked to do an independent evaluation for DuPont. DuPont is going to pay me, whatever I do.

4. Order for Outpatient Therapy

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH

Kathleen G. Shazes, Plaintiff	:	Civil Action - Law
vs.	:	No. F. R. 1992-970
Michael J. Shazes, Defendant	:	In Custody

ORDER OF COURT

NOW this 30th day of January, 195, it is hereby ordered that Michael J. Shazes, Jenny C. Shazes, Kathleen G. Shazes, and Michael Palmer Shazes shall participate in out-patient treatment at the Philadelphia Child Guidance Clinic under the direction of Pascal Scoles, D.S.W., L.C.S.W. The necessary therapy and treatment of Mrs. Shazes and the children will take place in the professional offices of Philadelphia Child Guidance Clinic as deemed necessary by Dr. Scoles. The court requests that the treatment professionals conduct only those evaluations necessary to determine the appropriate treatment and therapy. It is specifically ordered that any mental health professional from the Philadelphia Child Guidance Clinic who has been involved with the Shazes family in the past shall not be directly involved in their treatment.

Past evaluations and medical records as regards the parties should be made available to the Philadelphia Child Guidance Clinic upon request if these are deemed necessary to assist in evaluation and treatment

By the Court,
S/_____
Douglas W. Herman, J.

5. Discussion of the Lower Court Judge, Mr. Knauer (attorney for Defendant), and Mr. Desfor (attorney for Plaintiff) at the Recusal Hearing on October 20, 1994 concerning expert reports for the pending custody hearing:

THE COURT: I think, you know, maybe that's a good issue to raise. The

usual situation is that one or the other of counsel intends to use the doctor, but if I find out that neither party is going to call the doctor I should know about that, then I'll have to consider it because I may. So if you fellows know at this point whether or not you're —— neither one of you are going to call him, then I'd like to know about it.

MR.KNAUER: Your Honor, what is the Court's pleasure concerning the two reports and their admissibility?

THE COURT: Refresh my memory.

MR. KNAUER: In other words, Stecher and Nutter, both have rendered reports pursuant to the order of the Court.

Now, those documents are floating around. How do we get them to be part of the record in the event those two psychologists are not available or are not called?

The only point about that is Montgomery County you don't have the -- don't have to call the psychologist. The report goes in as evidence.

I don't know what the rule is in this county. I understand now there is a part of the standard order directing the psychologist to render a report that says that it will come in as evidence.

THE COURT: Dr. Stecher's report is generally made part of the record.

MR. KNAUER: Without him being present?

THE COURT: That's correct, subject to being attacked.

MR. KNAUER: The report?

THE COURT: Yes.

MR. DESFOR: How can you attack it if the doctor isn't here, Your Honor?

THE COURT: Well, you're talking about attacking if you're —- you must be referring, Mr. Desfor, to attacking the reliability or authentics or factual matters reported in there?

MR. DESFOR: Yes.

THE COURT: In that case you would have to subpoena him.

MR. DESFOR: Bu then he's my witness. I don't want him as a witness.

THE COURT: The rules of evidence allow you to impeach any witness. You're not stuck with his testimony simply because you call him

These are evidentiary matters that we can work out, gentlemen, if you know -- if you make your positions known. What I suggest to both of you if there's something in these reports or the reports in their entirety that are objectionable to you, make them a subject of a motion in limine before the custody.

If we have to we'll direct the doctor to be here as the Court's witness and you can impeach away at them. We're not going to make problems out of these kind of things.

If you want to stipulate to admissibility of the report but object to certain items in it, do that. There's any number of ways of handling that

or if you're going to object to the admissibility of both reports, one is going to objects to one and one is going to object to the other, let me know that in a motion in limine and we will wither direct that the doctors be here so that they can be cross-examined and we will not rely on the reports, but that's a matter that you prepare for custody -- we call them hearing and proceeding but they're -- you prepare for them the same way as you would any other trial.

MR. DESFOR: I can tell the Court unless the doctor is here to present a report I'm going to object to a report.

THE COURT: Dr. Stecher?

MR. DESFOR: Any report. Any report. I think that -- I suspect he -- I can just imagine that a report comes in without a doctor being there for all people to examine him regarding it. I mean the areas --

THE COURT: What you say by that, Mr. Desfor, the report is not extensive for purposes of your evidence so in that situation you subpoena him as a witness if you want to do more with him than what's in the report.

MR. DESFOR: I want to do less with him. There's -- in terms of that report, the credibility and a lot of the contents of the report I object and I think it's a matter of my cross-examining that doctor.

THE COURT: What I suggest is that you subpoena both. You know, if there's some reason you can't do that and you want to move the Court to make them the Court's witness's, we'll do that.

MR. DESFOR: There is a rule of evidence, Your Honor, I'm sure is familiar with. It says if you call a witness, you're stuck with the substance of his evidence.

THE COURT: Maybe I'm too much in the new school and I have to acknowledge what you're saying, Mr. Desfor, because new evidence has yet to be accepted, but I go by the federal rules and the federal rules say you can impeach your own witness, but, you know, if that's a problem, I'll direct that both these doctors be here for this hearing.